



November 21, 2002

Ms. Dona G. Hamilton
Vice Chancellor for Legal Affairs
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2002-6690

Dear Ms. Hamilton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172570.

The University of Houston (the "university") received a request for information held, written, or received by five named individuals or their offices that relates to the requestor's tenure case and grievance. You state that the university will release some of the requested information. You claim that other responsive information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted. We assume that the university has released any other responsive information that existed when this request for information was received. If not, then the university must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the university to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note that the submitted documents include a previous request by this same requestor for his tenure file. The submitted documents reflect that the previous request was made during August, 2001. You do not inform us, nor do our records indicate, that the university asked this office for a decision in connection with the previous request for information. Furthermore, some of the information that the university now seeks to withhold appears to have existed when the previous request was made and to be responsive to that request. In not asking this office for a decision in connection with the previous request, the university waived its claim that any information encompassed by the previous request is excepted from disclosure under section 552.107(1) of the Government Code. *See* Gov't Code §§ 552.006, .007, .301, .302; Open Records Decision No. 630 at 7 (1994) (governmental body may waive attorney-client privilege under section 552.107(1)). Therefore, unless the university has already released the information that is encompassed by

the previous request, it must release all such information, including any of the submitted information that is encompassed by the previous request, immediately. *See* Gov't Code §§ 552.301, .302.

To the extent that the previous request does not encompass the information that the university now seeks to withhold, we address your claim under section 552.107(1). Section 552.107(1) excepts from public disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]

Gov't Code § 552.107(1). Section 552.107(1) protects information that comes within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's communications made in confidence to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information that may be withheld pursuant to the attorney-client privilege under section 552.107(1).

You state that the bracketed portions of the submitted documents are attorney-client communications between the former general counsel of the university and the associate vice-chancellor/vice-president for academic affairs. You claim that this information is excepted from disclosure under section 552.107(1). Based on your representations and our review of the bracketed information, we agree that section 552.107(1) is applicable to this information. Therefore, to the extent that the previous request for information does not encompass the bracketed information, the university may withhold that information under section 552.107(1).

In summary, the university must release the information that is responsive to the requestor's previous request, including any submitted information that existed when the previous request was made and that is responsive to the previous request. To the extent that the previous request does not encompass the submitted information that the university now seeks to withhold, the university may withhold that information under section 552.107(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

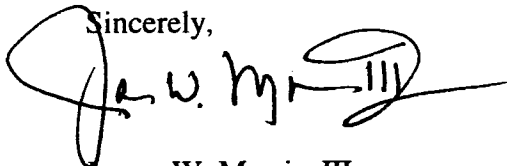
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris III", with a large, stylized initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 172570

Enc: Submitted documents

c: Dr. David Mazella
Assistant Professor of English
Department of English
University of Houston
Houston, Texas 77204-2028
(w/o enclosures)